

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) NOVEMBER 7, 2022
 RAMESH "SUNNY" BALWANI,)
) PAGES 1 - 18
 DEFENDANT.)
 _____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
KELLY VOLKAR
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:

IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 A P P E A R A N C E S: (CONT'D)

2 FOR DEFENDANT BALWANI: ORRICK, HERRINGTON & SUTCLIFFE LLP
3 BY: SHAWN ESTRADA
4 THE ORRICK BUILDING
5 405 HOWARD STREET
6 SAN FRANCISCO, CALIFORNIA 94105

7 BY: JEFFREY COOPERSMITH
8 701 FIFTH AVENUE, SUITE 5600
9 SEATTLE, WASHINGTON 98104

10 U.S. PROBATION: JESSICA GOLDSBERRY

11 ALSO PRESENT: OFFICE OF THE U.S. ATTORNEY
12 BY: SARA SLATTERY, PARALEGAL
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1 SAN JOSE, CALIFORNIA

NOVEMBER 7, 2022

2 P R O C E E D I N G S

09:34AM 3 (COURT CONVENED AT 9:34 A.M.)

09:34AM 4 THE COURT: LET'S CALL 18-258, UNITED STATES VERSUS
09:34AM 5 RAMESH BALWANI.

09:34AM 6 LET ME HAVE THE APPEARANCE OF THE PARTIES, PLEASE.

09:34AM 7 WHO APPEARS FOR THE GOVERNMENT?

09:34AM 8 MR. LEACH: GOOD MORNING, YOUR HONOR.

09:34AM 9 ROBERT LEACH ON BEHALF OF THE UNITED STATES.

09:34AM 10 I'M HERE WITH JEFF SCHENK, JOHN BOSTIC, AND KELLY VOLKAR.

09:34AM 11 THE COURT: THANK YOU. GOOD MORNING.

09:34AM 12 MR. COOPERSMITH: GOOD MORNING, YOUR HONOR.

09:34AM 13 JEFF COOPERSMITH ON BEHALF OF MR. BALWANI.

09:34AM 14 I'M HERE WITH MY COLLEAGUE, SHAWN ESTRADA, AND MR. BALWANI
09:34AM 15 IS PRESENT.

09:34AM 16 THE COURT: THANK YOU. GOOD MORNING.

09:34AM 17 WHO APPEARS FOR PROBATION?

09:34AM 18 PROBATION OFFICER: GOOD MORNING, YOUR HONOR.

09:34AM 19 JESSICA GOLDSBERRY FOR PROBATION.

09:34AM 20 THE COURT: THANK YOU. GOOD MORNING.

09:34AM 21 WE'RE HERE TODAY BECAUSE OF A NOTICED MOTION, I THINK IT'S
09:34AM 22 1621, A MOTION TO CONTINUE SENTENCING.

09:34AM 23 I'VE READ THE MOTION, THE OPPOSITION, THE REPLY, AND
09:34AM 24 SOMETHING CALLED A SUPPLEMENTAL REPLY.

09:34AM 25 ARE THERE ANY OTHER PLEADINGS THAT THE PARTIES WANT TO

09:34AM 1 CALL MY ATTENTION TO?

09:34AM 2 MR. LEACH: NO, YOUR HONOR.

09:34AM 3 MR. COOPERSMITH: NO, YOUR HONOR.

09:34AM 4 THE COURT: ALL RIGHT. FOR MR. COOPERSMITH, WHY

09:35AM 5 DON'T YOU GIVE US AN UPDATE ON THE MEDICAL SITUATION.

09:35AM 6 MR. COOPERSMITH: YES, YOUR HONOR.

09:35AM 7 ONE THING I'LL NOTE IS THAT THESE ARE PRIVATE MATTERS,

09:35AM 8 AND --

09:35AM 9 THE COURT: WELL, YOU CAN TALK ABOUT THEM WITHOUT

09:35AM 10 GETTING INTO DETAIL I THINK.

09:35AM 11 MR. COOPERSMITH: I WILL TRY, YOUR HONOR.

09:35AM 12 THE COURT: SURE.

09:35AM 13 MR. COOPERSMITH: AND IF THE COURT HAS QUESTIONS

09:35AM 14 THAT GET INTO DETAIL, I'LL ASK YOU TO SEAL THE COURTROOM.

09:35AM 15 THE COURT: RIGHT.

09:35AM 16 MR. COOPERSMITH: I UNDERSTAND.

09:35AM 17 SO THE MEDICAL SITUATION IS UNCHANGED FROM WHAT YOU'VE

09:35AM 18 READ ABOUT IN OUR PAPERS, YOUR HONOR.

09:35AM 19 THERE'S STILL THIS ISSUE THAT REQUIRES MR. BALWANI TO TAKE

09:35AM 20 MEDICATION AND --

09:35AM 21 THE COURT: LET ME LOOK AT THE LATEST DOCTOR'S

09:35AM 22 UPDATE THAT YOU BROUGHT WITH YOU TODAY.

09:35AM 23 MR. COOPERSMITH: OH, YES, YOUR HONOR.

09:35AM 24 THE COURT: DID YOU SHARE THAT WITH THE GOVERNMENT?

09:35AM 25 MR. COOPERSMITH: I CAN GIVE THEM A COPY,

09:35AM 1 YOUR HONOR.

09:35AM 2 THE COURT: SURE. THAT WOULD BE HELPFUL.

09:35AM 3 MR. COOPERSMITH: AND -- (HANDING.)

09:35AM 4 THIS IS JUST FROM A VISIT TO THE PHYSICIAN ON FRIDAY, LAST
09:35AM 5 WEEK, ON NOVEMBER 4TH.

09:35AM 6 THE COURT: SURE.

09:35AM 7 MR. COOPERSMITH: AND IT JUST -- AND I CAN GO INTO
09:36AM 8 DETAIL ABOUT WHY CERTAIN PRESCRIPTIONS WERE CHANGED AND WHAT
09:36AM 9 IMPACT THEY HAVE, BUT, AGAIN, IT WOULD BE HARD TO DO THAT IN
09:36AM 10 OPEN COURT.

09:37AM 11 (PAUSE IN PROCEEDINGS.)

09:37AM 12 THE COURT: WELL, THIS IS INVOLVING A MEDICATION
09:37AM 13 CHANGE.

09:37AM 14 MR. COOPERSMITH: YES, YOUR HONOR. AND IT WOULD BE
09:37AM 15 PERHAPS HELPFUL TO THE COURT TO HEAR SOME MORE DETAIL ABOUT WHY
09:37AM 16 THAT OCCURRED AND WHAT THE SITUATION IS, BUT, AGAIN, I DON'T
09:37AM 17 KNOW HOW I CAN DO THAT IN AN OPEN COURTROOM.

09:37AM 18 (PAUSE IN PROCEEDINGS.)

09:37AM 19 THE COURT: SO THE LAST -- ONE OF YOUR PLEADINGS
09:37AM 20 SUGGESTS THAT I THINK THERE WAS A FOUR WEEK TIME PERIOD, AND IT
09:37AM 21 WAS MENTIONED. AND THAT SHOULD -- LET'S SEE. WOULD THAT
09:37AM 22 HAVE -- WELL, THERE WAS 21 DAYS INITIALLY, I THINK, IN THE
09:37AM 23 PLEADINGS. THAT SHOULD TAKE US TO NOVEMBER 3RD. AND THEN
09:37AM 24 THERE WAS A FOUR WEEK PERIOD THAT SHOULD TAKE US A LITTLE BIT
09:37AM 25 BEYOND.

09:37AM 1 DO YOU HAVE ANY UPDATE -- ANY OTHER MEDICAL UPDATES OTHER
09:38AM 2 THAN MEDICATION CHANGES?

09:38AM 3 MR. COOPERSMITH: ONLY -- WHAT I CAN SAY OPENLY,
09:38AM 4 YOUR HONOR, IS THAT THERE IS NO CHANGE IN MR. BALWANI'S
09:38AM 5 CONDITION, AND THAT YOU'RE CORRECT THAT ON AVERAGE FOUR WEEKS
09:38AM 6 IS A TIMEFRAME WHERE THIS ISSUE FOR SOME PATIENTS IS RESOLVED,
09:38AM 7 BUT IN THIS CASE IS NOT YET TO BE RESOLVED.

09:38AM 8 OBVIOUSLY THE FOUR WEEKS IS NOT A HARD AND FAST RULE. IT
09:38AM 9 COULD OCCUR IN THAT TIMEFRAME OR NOT.

09:38AM 10 AND AS WE ALSO EXPLAINED, IF IT IS NOT RESOLVED IN THAT
09:38AM 11 TIMEFRAME, THERE IS ADDITIONAL MEDICAL TREATMENT THAT
09:38AM 12 MR. BALWANI WOULD HAVE TO CONSIDER.

09:38AM 13 SO --

09:38AM 14 THE COURT: THAT'S WHAT I THOUGHT WE WOULD BE
09:38AM 15 TALKING ABOUT TODAY BECAUSE OF THE PASSAGE OF TIME PUTS US IN
09:38AM 16 THAT FOUR WEEK PERIOD.

09:38AM 17 AND IF THINGS HAVEN'T HAPPENED THEN I THINK YOUR PAPERS
09:38AM 18 SUGGEST AT LEAST TWO OTHER PROCEDURES, POTENTIAL PROCEDURES.
09:38AM 19 BUT --

09:38AM 20 MR. COOPERSMITH: RIGHT. IT HASN'T QUITE BEEN FOUR
09:39AM 21 WEEKS, YOUR HONOR. THE ORIGINAL VISIT, BASED ON THE
09:39AM 22 ATTACHMENT, THE DOCTOR'S NOTES FROM OUR ORIGINAL MOTION, IS
09:39AM 23 OCTOBER 13TH.

09:39AM 24 THE COURT: RIGHT.

09:39AM 25 MR. COOPERSMITH: SO IT'S NOT QUITE BEEN THE FOUR

09:39AM 1 WEEKS.

09:39AM 2 SO AFTER THAT DATE, YOU KNOW, I'M NOT SURE IT'S PRECISELY
09:39AM 3 ON NOVEMBER 13TH OR GIVE OR TAKE A DAY, BUT THAT POINT NEXT
09:39AM 4 WEEK, WHICH IS OBVIOUSLY RIGHT ON THE HEELS OF THE CURRENT
09:39AM 5 SENTENCING SCHEDULE, HE WOULD HAVE TO CONSIDER ADDITIONAL
09:39AM 6 PROCEDURES WHICH WE'VE LAID OUT IN OUR PAPERS.

09:39AM 7 THE COURT: I SEE. OKAY.

09:39AM 8 WELL, LET ME HEAR FROM THE GOVERNMENT AT THIS POINT BEFORE
09:39AM 9 WE GO -- DISCUSS ANYTHING FURTHER.

09:39AM 10 MR. LEACH: THANK YOU, YOUR HONOR.

09:39AM 11 I DON'T HAVE ANYTHING ADDITIONAL BEYOND WHAT IS IN OUR
09:39AM 12 PAPERS. OBVIOUSLY WE DON'T HAVE ANY ADDITIONAL INSIGHT INTO
09:39AM 13 THE DEFENDANT'S CONDITION OTHER THAN WHAT HAS BEEN PROVIDED
09:39AM 14 HERE IN COURT TODAY.

09:39AM 15 THE -- BASED ON THE ONE PAGE THAT MR. COOPERSMITH HAS
09:40AM 16 PROVIDED, THE ONLY THING I'M OBSERVING IS A CHANGE IN
09:40AM 17 MEDICATION, AND IT DOESN'T APPEAR THAT HE HAS ANY APPOINTMENTS
09:40AM 18 SCHEDULED IN THE FORESEEABLE FEATURE.

09:40AM 19 SO I DON'T HAVE ANY MORE INFORMATION THAN THAT.

09:40AM 20 I DID NOTE THE FOUR WEEKS WOULD BRING US INTO EITHER LATE
09:40AM 21 THIS WEEK OR EARLY NEXT, AND WE WOULD LIKE TO KEEP THINGS ON
09:40AM 22 TRACK AS MUCH AS POSSIBLE.

09:40AM 23 THE COURT: IT DOES SAY NO FURTHER APPOINTMENTS. IT
09:40AM 24 SUGGESTS EVERYTHING IS FINE.

09:40AM 25 MR. COOPERSMITH: EVERYTHING IS NOT FINE,

09:40AM 1 YOUR HONOR. AND MR. BALWANI WOULD REACH OUT AND MAKE AN
09:40AM 2 APPOINTMENT.

09:40AM 3 AND I'LL JUST SAY, HE'S SUFFERING CONSIDERABLE PAIN AND
09:40AM 4 THE MEDICATIONS HAVE AN IMPACT, WHICH I CAN GO INTO IN A CLOSED
09:40AM 5 COURTROOM.

09:40AM 6 AND, YOUR HONOR, ONE OTHER THING IS THAT THE APPOINTMENT
09:40AM 7 THAT WHERE YOU SEE THE MEDICATION CHANGE THAT WAS IN THE PAPER
09:40AM 8 THAT I HANDED UP TO THE COURT, THAT WAS JUST FROM NOVEMBER 4TH.
09:41AM 9 OBVIOUSLY WE'RE NOW A FEW DAYS LATER, THE NEXT BUSINESS DAY,
09:41AM 10 NOVEMBER 7TH, AND THERE ARE GOING TO BE, AS THERE ALWAYS ARE,
09:41AM 11 MORE DETAILED CHART NOTES ABOUT THAT APPOINTMENT.

09:41AM 12 BUT THEY JUST DON'T HAVE THOSE AVAILABLE YET FROM
09:41AM 13 SUTTER HEALTH AS OF COURT THIS MORNING. YOU KNOW, WE OBVIOUSLY
09:41AM 14 CAN PROVIDE THEM TO THE COURT BUT, YOU KNOW, HOPEFULLY THEY'RE
09:41AM 15 AVAILABLE TODAY AT SOME POINT, BUT I DIDN'T HAVE THEM OTHER
09:41AM 16 THAN THE ONE PAGE I HANDED UP, I DIDN'T HAVE THE CHART AND
09:41AM 17 OBVIOUSLY WE LOOKED FOR THEM AND MY OWN EXPERIENCE IS SIMILAR,
09:41AM 18 AND MAYBE YOUR HONOR'S TOO, THAT SOMETIMES CHART NOTES DON'T
09:41AM 19 GET IN THE FILE RIGHT AWAY AND IT TAKES A DAY OR TWO.

09:41AM 20 THE COURT: SUTTER HEALTH IS REALLY AMAZING. THEY
09:41AM 21 REALLY HAVE A COMPREHENSIVE REPORTING SYSTEM, AND IT IS AMAZING
09:41AM 22 HOW YOU CAN GO ONLINE WITH YOUR ACCOUNT AND GET YOUR DOCTOR OR
09:41AM 23 YOUR PHYSICIAN'S NOTES, WHATEVER SHE HAS PUT IN THERE, AND YOU
09:41AM 24 GET THEM IN REAL TIME, SO IT'S A VERY EFFICIENT SYSTEM, MY
09:42AM 25 EXPERIENCE IS.

09:42AM 1 MR. COOPERSMITH: AND THAT'S EXACTLY WHAT
09:42AM 2 MR. BALWANI HAS BEEN LOOKING AT AND THAT'S WHAT WE WOULD
09:42AM 3 PROVIDE TO THE COURT IF IT WERE AVAILABLE, IT'S JUST NOT
09:42AM 4 AVAILABLE THIS MINUTE.

09:42AM 5 THE COURT: WELL, LET ME TALK ABOUT SOMETHING THAT
09:42AM 6 IS PERHAPS A LITTLE MORE TANGIBLE THAT WE CAN ACTUALLY FOCUS
09:42AM 7 ON, AND THAT IS THE PROBATION REPORT.

09:42AM 8 MR. COOPERSMITH: CERTAINLY.

09:42AM 9 THE COURT: AND YOU DON'T HAVE IT YET. MY SENSE IS
09:42AM 10 THAT YOU WOULD HAVE TO TODAY. IS THAT --

09:42AM 11 PROBATION OFFICER: THEY COULD HAVE IT TODAY.

09:42AM 12 THE COURT: RIGHT. SO IF THAT WERE TO HAPPEN, THEN
09:42AM 13 WE WOULD COUNT -- WE WOULD COUNT 14 DAYS FROM THAT.

09:42AM 14 LET ME JUST STATE, YOU'RE ABSOLUTELY RIGHT IN YOUR
09:42AM 15 PLEADINGS, YOU'RE ENTITLED TO HAVE THE REPORT 14 DAYS PRIOR TO,
09:42AM 16 AND SO I -- RECOGNIZING THAT, I AM GOING TO CONTINUE THE
09:42AM 17 SENTENCING FROM THE CURRENT SENTENCE DATE AT A MINIMUM TO ALLOW
09:42AM 18 YOU TO HAVE THE STATUTORY PERIOD OF TIME THAT YOU REQUIRE TO
09:42AM 19 PREPARE.

09:42AM 20 AND I'VE LOOKED AT DATES. LET'S JUST TALK ABOUT THAT FOR
09:42AM 21 JUST A MOMENT. THE DATES THAT ARE AVAILABLE TO THE COURT TO
09:43AM 22 CONTINUE ARE WE CAN DO NOVEMBER 23RD, WHICH IS THE DAY BEFORE A
09:43AM 23 HOLIDAY, BUT WE'RE AVAILABLE THEN; DECEMBER 6TH; DECEMBER 7TH.

09:43AM 24 LET'S START WITH THOSE THREE DATES.

09:43AM 25 MR. COOPERSMITH: YES, YOUR HONOR.

09:43AM 1 A COUPLE OF THINGS, AND WE DID NOTE IN OUR PLEADINGS THAT,
09:43AM 2 YES, THOSE DATES WOULD GIVE US THE 14 DAYS THAT THE LOCAL RULES
09:43AM 3 PROVIDE, AND WE APPRECIATE YOUR HONOR'S SENSITIVITY TO THAT, SO
09:43AM 4 THANK YOU FOR THAT.

09:43AM 5 WE ALSO EXPLAINED, YOU KNOW, SOME OF THE TRAVEL ISSUES
09:43AM 6 WITH MR. BALWANI'S FAMILY IN OHIO.

09:43AM 7 THE COURT: I READ THAT. THE CHILDREN HAVE FINALS
09:43AM 8 DURING THAT TIME AND THEY WOULD OTHERWISE BE PRECLUDED.

09:43AM 9 YOU KNOW, MY SENSE IS THEY SHOULD FOCUS ON THEIR FINALS,
09:43AM 10 AND THAT'S THE MOST IMPORTANT THING. I RATHER EXPECT YOUR
09:44AM 11 CLIENT PROBABLY IN HIS GENEROSITY WOULD WANT THEM TO FOCUS ON
09:44AM 12 THEIR -- DO WELL AND GET A'S CONSISTENTLY ON THEIR EXAMS AS
09:44AM 13 OPPOSED TO BEING HERE, BUT IT'S NOT APPROPRIATE FOR ME TO SAY,
09:44AM 14 BUT --

09:44AM 15 MR. COOPERSMITH: OF COURSE, YOUR HONOR.

09:44AM 16 THE COURT: I GUESS I WAS TRYING TO SAY THAT DOESN'T
09:44AM 17 MOTIVATE ME, AND PARDON ME, I DON'T MEAN ANY DISRESPECT TO YOUR
09:44AM 18 CLIENT OR HIS FAMILY, BUT I DON'T FIND GOOD CAUSE IN THAT.
09:44AM 19 MAYBE THE GOVERNMENT, MAYBE THEY DO.

09:44AM 20 MR. LEACH: WE DO NOT, YOUR HONOR. WE LAID OUT OUR
09:44AM 21 REASONING IN OUR PAPERS. THERE ARE A NUMBER OF DIFFERENT
09:44AM 22 INTERESTS AT STAKE IN THE SENTENCING, AND WE DIDN'T THINK
09:44AM 23 FINALS WERE A REASON TO HAVE A SIGNIFICANT DELAY BETWEEN THE
09:44AM 24 TWO SENTENCINGS.

09:44AM 25 SO FOR THE REASONS WE SET FORTH IN OUR BRIEF, WE DID NOT

09:44AM 1 THINK THAT WAS GOOD CAUSE FOR NOT FINDING A DATE IN DECEMBER.

09:44AM 2 THE COURT: SURE. WELL, THANK YOU.

09:44AM 3 AND I NOTE THE BROTHER, A BROTHER, I THINK, I DON'T KNOW,
09:44AM 4 I SAW FAMILY MEMBERS HERE, YOU MAY HAVE IDENTIFIED THEM AS
09:44AM 5 BROTHERS AND OTHERS IN COURT.

09:45AM 6 AND I DON'T THINK THAT THESE YOUNG PEOPLE WERE HERE, THE
09:45AM 7 STUDENTS WERE HERE AT ALL. THEY WERE IN THEIR STUDIES I'M
09:45AM 8 SURE.

09:45AM 9 MR. COOPERSMITH: YES. ONE OF THE YOUNG PEOPLE,
09:45AM 10 MR. BALWANI'S NIECE, WAS PRESENT IN COURT. HER NAME IS
09:45AM 11 TANYA BALWANI. SHE'S ONE OF THE -- SHE'S A STUDENT AT
09:45AM 12 OHIO STATE. THAT'S WHY SHE HAS FINALS.

09:45AM 13 THE COURT: SURE.

09:45AM 14 MR. COOPERSMITH: I KNOW THAT ORDINARILY,
09:45AM 15 YOUR HONOR, IT WOULD SOUND LIKE, WELL, THESE ARE NIECES AND
09:45AM 16 NEPHEWS. AND ALSO THERE'S AN ISSUE WITH ONE OF MR. BALWANI'S
09:45AM 17 BROTHERS, RAGESH BALWANI, HE LIVES IN THE BAY AREA, BUT HIS
09:45AM 18 WIFE IS HAVING TO TRAVEL OVERSEAS TO VISIT HER VERY ILL FATHER,
09:45AM 19 AND I KNOW ORDINARILY THE COURT MIGHT THINK, WELL, THAT'S TOO
09:45AM 20 BAD, BUT EVERYONE HAS THEIR OWN SCHEDULES.

09:45AM 21 MR. BALWANI DOESN'T HAVE ANY CHILDREN OF HIS OWN. HE'S
09:45AM 22 VERY CLOSE TO BOTH OF HIS BROTHERS AND HIS BROTHERS' FAMILIES
09:45AM 23 AND HIS NIECES AND NEPHEWS IN PART BECAUSE HE DOESN'T HAVE
09:46AM 24 CHILDREN OF HIS OWN. AND SO THESE ARE VERY CLOSE FAMILY
09:46AM 25 MEMBERS, AND CLOSER THAN CERTAINLY I AM TO MY OWN NIECES AND

09:46AM 1 NEPHEWS, AND THAT'S WHY WE BROUGHT THAT TO THE ATTENTION OF THE
09:46AM 2 COURT.

09:46AM 3 THE COURT: SURE, OF COURSE.

09:46AM 4 MR. COOPERSMITH: THE ONLY THING I WOULD LIKE TO SAY
09:46AM 5 AGAIN, YOUR HONOR, AND I, AGAIN, I DO APPRECIATE THE COURT'S
09:46AM 6 CONSIDERATION ABOUT THE 14 DAYS, IS THAT -- AND AGAIN, IT'S
09:46AM 7 HARD TO SPEAK OPENLY, BUT THERE'S STILL THESE MEDICAL ISSUES
09:46AM 8 THAT ARE IMPACTING MR. BALWANI, THEY ARE IMPACTING HIS ABILITY
09:46AM 9 TO CONCENTRATE AND FOCUS ON THIS REALLY IMPORTANT TASK AT HAND,
09:46AM 10 AND THIS MAY NOT BE RESOLVED IN THE TIMEFRAME THE COURT IS
09:46AM 11 TALKING ABOUT.

09:46AM 12 THAT'S WHY WE WERE HOPING THAT THE COURT COULD -- WE'RE
09:46AM 13 NOT ASKING FOR A VERY LENGTHY CONTINUANCE AS THINGS GO.

09:46AM 14 THE COURT: LET ME ASK YOU, ARE YOU ASKING TO BE
09:46AM 15 SENTENCED AFTER THE CODEFENDANT, IS THAT YOUR DESIRE?

09:46AM 16 MR. COOPERSMITH: THAT WOULD BE THE IMPACT OF THE
09:46AM 17 CONTINUANCE, BUT THAT'S NOT PART OF OUR MOTION, YOUR HONOR.

09:46AM 18 WELL, WE ARE ASKING FOR --

09:47AM 19 THE COURT: WELL, IMPLICITLY IT ISN'T, BUT ON THE
09:47AM 20 CALENDAR IT IS.

09:47AM 21 MR. COOPERSMITH: AS IT HAPPENED, YOUR HONOR.

09:47AM 22 BUT WE ARE SIMPLY ASKING FOR THE CONSIDERATION GIVEN THE
09:47AM 23 HEALTH ISSUES SO MR. BALWANI CAN BE SINGULARLY FOCUSSED WITH
09:47AM 24 HIS LAWYERS ON THIS TASK AND THAT'S WHY WE'VE ASKED FOR -- AND
09:47AM 25 I KNOW -- I UNDERSTAND AND I RESPECT THE GOVERNMENT'S INTEREST

09:47AM 1 IN PROCEEDING, AND I RESPECT THE GOVERNMENT'S INTEREST IN
09:47AM 2 PROCEEDING, AND I RESPECT THE COURT'S INTEREST IN PROCEEDING.
09:47AM 3 BUT THIS IS MR. BALWANI'S LIFE, AND THERE'S A LOT AT STAKE
09:47AM 4 HERE. AND WE'VE ASKED FOR LESS THAN OR APPROXIMATELY A TWO
09:47AM 5 MONTH CONTINUANCE, WHICH I THINK IS NOT UNUSUAL IN THE SCHEME
09:47AM 6 OF THINGS IN COMPLICATED CASES.

09:47AM 7 I DON'T KNOW THAT MS. GOLDSBERRY NEEDS MORE TIME, BUT IT
09:47AM 8 WOULD ALLOW MORE TIME FOR THAT AS WELL SINCE SHE CAN RESOLVE
09:47AM 9 THE OBJECTIONS THAT HAVE GONE BACK AND FORTH BETWEEN THE
09:47AM 10 GOVERNMENT AND THE DEFENSE, AND WE'RE ASKING FOR THAT
09:47AM 11 ADDITIONAL TIME, YOUR HONOR.

09:47AM 12 THE COURT: NO. I APPRECIATE THAT. YOU KNOW, THE
09:47AM 13 CONVICTION, AS YOU POINT OUT IN YOUR PLEADINGS, WAS JULY 7TH,
09:48AM 14 AND WE SET THE SENTENCING FOR NOVEMBER 15TH.

09:48AM 15 MR. COOPERSMITH: WE NEVER ASKED FOR A PREVIOUS
09:48AM 16 CONTINUANCE. THIS IS THE ONLY REQUEST.

09:48AM 17 THE COURT: RIGHT. NO. I AM AWARE OF THAT.

09:48AM 18 AND I'M ALSO AWARE THAT WORK STARTS IMMEDIATELY
09:48AM 19 THEREAFTER, YOU KNOW, THE WORK ON WHAT IS NEXT IN THE CASE, AND
09:48AM 20 FROM JULY TO NOW IT'S -- OF COURSE, YOU HAVEN'T HAD THE BENEFIT
09:48AM 21 OF THE PROBATION REPORT, BUT YOU CERTAINLY -- YOU TRIED THE
09:48AM 22 CASE. YOU HAVE INTIMACY WITH THE KNOWLEDGE AND FACTS OF THE
09:48AM 23 CASE. SO, SO, I RECOGNIZE THAT.

09:48AM 24 I JUST DON'T THINK GOING INTO JANUARY IS REALLY NEEDED,
09:48AM 25 MR. COOPERSMITH, NOTWITHSTANDING EVERYTHING THAT YOU'VE SAID.

09:48AM 1 I DO THINK THAT WE CAN PROCEED, AND I WILL CONTINUE THE CASE.

09:48AM 2 AS I SAID, YOU'RE ENTITLED TO THAT STATUTORILY. I DON'T THINK

09:48AM 3 JANUARY IS NECESSARY, AT LEAST ON THE STATE OF THE RECORD

09:49AM 4 TODAY.

09:49AM 5 SO I LOOK AT DECEMBER -- WE WON'T DO IT THE DAY BEFORE

09:49AM 6 THANKSGIVING. I'M NOT GOING TO DO THAT.

09:49AM 7 BUT DECEMBER 6TH OR 7 LOOK LIKE THEY'RE AVAILABLE FOR THE

09:49AM 8 COURT.

09:49AM 9 ARE THEY AVAILABLE FOR THE PARTIES?

09:49AM 10 MR. LEACH: YES, YOUR HONOR.

09:49AM 11 MR. COOPERSMITH: MAY I HAVE A MOMENT, YOUR HONOR?

09:49AM 12 THE COURT: OF COURSE.

09:49AM 13 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

09:49AM 14 MR. COOPERSMITH: THANK YOU, YOUR HONOR. I

09:49AM 15 APPRECIATE THE COURT'S INDULGENCE.

09:49AM 16 WE ARE AVAILABLE, PUTTING ASIDE THE ISSUE OF MR. BALWANI'S

09:50AM 17 FAMILY, WHICH THE COURT ADDRESSED, WE'RE AVAILABLE ON

09:50AM 18 DECEMBER 6TH AND 7TH, EITHER OF THOSE DAYS.

09:50AM 19 I WOULD ASK THE COURT, THOUGH, WHEN THE ADDITIONAL MEDICAL

09:50AM 20 INFORMATION IS AVAILABLE FROM SUTTER HEALTH, THAT WE CAN SUBMIT

09:50AM 21 THAT FOR THE COURT'S CONSIDERATION. WE'LL HAVE TO SUBMIT IT

09:50AM 22 UNDER SEAL OR I SUPPOSE WE CAN EMAIL TO MS. ROBINSON, OR

09:50AM 23 WHATEVER THE COURT PREFERS, OR WE CAN GO THROUGH THE FORMAL

09:50AM 24 PROCESS OF SEALING PAPERS. BUT EITHER WAY, WE WOULD ASK THE

09:50AM 25 COURT TO LOOK AT THAT, AND IF YOUR HONOR FEELS THAT ADDITIONAL

09:50AM 1 TIME IS NECESSARY, YOU WOULD HAVE THAT OPTION.

09:50AM 2 THE COURT: WELL, OF COURSE I WOULD. AND YOU CAN DO
09:50AM 3 WHAT YOU NEED TO DO WHAT YOU THINK IS APPROPRIATE. IN THE
09:50AM 4 BUREAU OF PRISONS, I'M NOT SAYING ANYTHING, BUT THERE ARE
09:50AM 5 MEDICAL FACILITIES AVAILABLE SHOULD THAT BE NECESSARY ONGOING.
09:50AM 6 I SAY THAT TO YOU JUST FOR YOUR CLIENT'S INFORMATION.

09:50AM 7 AND I DON'T MEAN TO SUGGEST THAT THE COURT HAS MADE ANY
09:50AM 8 DECISION ABOUT SENTENCING AT ALL. I HAVEN'T SEEN A REPORT IN
09:50AM 9 THIS CASE, SO I DON'T KNOW WHAT IS GOING ON, BUT --

09:50AM 10 MR. COOPERSMITH: YES, YOUR HONOR.

09:50AM 11 AND ON THAT SCORE I'LL NOTE, YES, THEY ARE REQUIRED TO
09:51AM 12 PROVIDE MEDICAL CARE AND OBVIOUSLY IT MAY NOT COME TO THAT.

09:51AM 13 THE COURT: RIGHT, RIGHT, IT MAY NOT. THEN HE CAN
09:51AM 14 HAVE HIS PRIVATE CARE CONTINUED IF THAT'S THE COURSE.

09:51AM 15 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

09:51AM 16 BUT I'VE HAD A SERIES OF CASES WHERE THE BUREAU OF PRISONS
09:51AM 17 MEDICAL CARE HAS BEEN SEEN AS DEFICIENT AND YOUR HONOR HAS
09:51AM 18 PROBABLY SEEN THOSE CASES TOO, SO.

09:51AM 19 THE COURT: WELL, WE'RE AHEAD OF OURSELVES.

09:51AM 20 MR. COOPERSMITH: YES, YOUR HONOR.

09:51AM 21 THE COURT: ALL RIGHT. WELL, LET'S SET -- LET ME
09:51AM 22 JUST ASK, WHAT IS YOUR PREFERENCE ON THOSE TWO DATES? IS THERE
09:51AM 23 A PREFERENCE FOR YOUR TEAM, MR. COOPERSMITH?

09:51AM 24 MR. COOPERSMITH: I DON'T HAVE ONE. I SUPPOSE THE
09:51AM 25 7TH -- AND BY THE WAY, I HAVE NOT CONFERRED WITH MY CO -- OTHER

09:51AM 1 COCOUNSEL LIKE MS. WALSH AND MR. CAZARES, BUT I WOULD IMAGINE
09:51AM 2 THAT HAVING AN ADDITIONAL DAY TO TRAVEL FROM NEW YORK FOR
09:52AM 3 MS. WALSH MIGHT BE HELPFUL. SO I'LL THROW THE DART AT THE
09:52AM 4 DARTBOARD AND PICK THE 7TH AND HOPE THAT WILL WORK.

09:52AM 5 THE COURT: ALL RIGHT. LET'S DO THAT NOW. WOULD
09:52AM 6 THAT WORK FOR PROBATION?

09:52AM 7 PROBATION OFFICER: BOTH DAYS WORK, YOUR HONOR, YES.

09:52AM 8 THE COURT: ALL RIGHT. AND WHAT WAS -- IF YOU COULD
09:52AM 9 TELL US THE STATUS OF THE COMPLETION OF THE REPORT.

09:52AM 10 PROBATION OFFICER: THE REPORT IS DONE AND WITH THE
09:52AM 11 SUPERVISOR, BUT I JUST THIS MORNING SEE AN ADDITIONAL LETTER
09:52AM 12 FROM DEFENSE WITH QUITE A FEW MORE OBJECTIONS IN RESPONSE TO
09:52AM 13 THE GOVERNMENT'S LETTER OF OBJECTION.

09:52AM 14 SO --

09:52AM 15 THE COURT: WELL, LET'S COUNT BACKWARDS FROM THE
09:52AM 16 7TH.

09:52AM 17 PROBATION OFFICER: SURE. SO TWO WEEKS.

09:52AM 18 THE COURT: THAT'S THE 23RD, IS IT?

09:52AM 19 PROBATION OFFICER: WOULD BE THE 23RD, YES.

09:52AM 20 THE COURT: DO YOU THINK YOU CAN HAVE THAT -- I'D
09:52AM 21 LIKE THE PARTIES TO HAVE THAT WELL BEFORE THE -- AS EARLY AS
09:52AM 22 POSSIBLE SO THEY HAVE AS MUCH TIME TO PREPARE AS THEY CAN,
09:52AM 23 PARTICULARLY MR. COOPERSMITH. HE'S SUGGESTING THERE'S SOME --

09:53AM 24 PROBATION OFFICER: I COULD AIM, ESPECIALLY BECAUSE
09:53AM 25 THERE'S A HOLIDAY WEEK IN THERE, HOW ABOUT IF I AIM TO HAVE IT

09:53AM 1 OUT BY THE 15TH? THAT WOULD GIVE -- THAT WOULD BE THREE WEEKS
09:53AM 2 BEFORE SENTENCING.

09:53AM 3 MR. COOPERSMITH: YOUR HONOR, OBVIOUSLY THAT'S
09:53AM 4 WELL -- EVEN MORE GENEROUS TO THE LOCAL RULES, AND SO I HAVE NO
09:53AM 5 COMPLAINT WITH THAT.

09:53AM 6 I WILL JUST SAY FOR THE RECORD THAT WE DO APPRECIATE
09:53AM 7 MS. GOLDSBERRY'S WORK AND HER OFFICE'S WORK ON THIS. IT'S A
09:53AM 8 COMPLICATED CASE. OUR OBJECTIONS, WHICH WERE LENGTHY, WERE NOT
09:53AM 9 MEANT TO BURDEN THE PROBATION OFFICE BUT SIMPLY A REFLECTION OF
09:53AM 10 THE COMPLICATED CASE THIS IS.

09:53AM 11 THE COURT: WELL, YOU HAVE TO REPRESENT YOUR
09:53AM 12 CLIENT --

09:53AM 13 MR. COOPERSMITH: RIGHT.

09:53AM 14 THE COURT: -- IN DOING THAT AND I THINK WE ALL, AND
09:53AM 15 THE GOVERNMENT, RECOGNIZES THAT AS WELL. AND THERE'S ARGUMENTS
09:53AM 16 THAT YOU NEED TO PRESERVE FOR THAT. I RESPECT THAT, I DO.

09:53AM 17 OF COURSE THE CODE GIVES US THE STATUTE, THE LOCAL RULES
09:53AM 18 GIVE THE JUDGE TWO WEEKS TO ABSORB ALL OF THAT. SO I'M TRYING
09:54AM 19 TO SCHEDULE OUR CALENDAR AS WELL.

09:54AM 20 COULD I ASK PROBATION -- COULD YOU GET THAT MONDAY THE
09:54AM 21 14TH?

09:54AM 22 PROBATION OFFICER: YES, YES.

09:54AM 23 THE COURT: IS THAT ASKING TOO MUCH? IS THAT ALL
09:54AM 24 RIGHT?

09:54AM 25 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

09:54AM 1 THE COURT: THE CLOSE OF BUSINESS, THE 14TH, YOU'LL
09:54AM 2 HAVE THAT AND THAT GIVES YOU THE BALANCE OF THAT WEEK TO LOOK
09:54AM 3 AT IT AND PREPARE.

09:54AM 4 WE HOPE THAT THINGS GO POSITIVE IN THE MEDICAL FRONT.
09:54AM 5 YOUR CLIENT IS HERE. HE LOOKS WELL. I'M HAPPY TO SEE HIM
09:54AM 6 HERE, AND I HOPE THAT CONTINUES TO GO WELL.

09:54AM 7 BUT AS I SAID, IF YOU WANT TO PROVIDE OTHER UPDATE,
09:54AM 8 INFORMATION TO THE GOVERNMENT AND TO THE COURT, OF COURSE I'LL
09:54AM 9 RECEIVE THAT.

09:54AM 10 MR. COOPERSMITH: THANK YOU, YOUR HONOR. HE IS
09:54AM 11 HERE. HE IS NOT WELL, BUT HE IS HERE, AND WE APPRECIATE THE
09:54AM 12 COURT'S COMMENTS ON THAT.

09:54AM 13 THE COURT: SURE.

09:54AM 14 ANYTHING FURTHER?

09:54AM 15 MR. LEACH: NO, YOUR HONOR. THANK YOU.

09:54AM 16 THE COURT: ANYTHING FURTHER?

09:54AM 17 MR. COOPERSMITH: NO, YOUR HONOR.

09:55AM 18 THE COURT: OKAY. GOOD SEEING YOU ALL. THANK YOU.

09:55AM 19 MR. LEACH: THANK YOU.

09:55AM 20 (COURT CONCLUDED AT 9:55 A.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: *